RECENT DECISIONS

BANKS AND BANKING—WITHDRAWAL OF DEPOSITS—DISCHARGE OF SURETY.—A bank acquired a certain note from the payee, knowing that the defendant was an accommodation maker and in legal effect only a surety thereon. At the maturity of the note the payee had on deposit in the bank an amount sufficient to pay it, but the bank failed to apply the funds to its payment, allowing the payee to withdraw them; and brought an action against the accommodation maker on the note. *Held*, the accommodation maker is discharged. *Tatum* v. *Commercial Bank & Trust Co.* (Ala.), 69 South. 508.

The rule is well settled that when a creditor holds collateral security for the payment of a note and releases such collateral, he thereby discharges the sureties. *Barret* v. *Bass*, 105 Ga. 421, 31 S. E. 435; *Hutchinson* v. *Woodwell*, 107 Pa. St. 509. Also that when a bank is the holder of a note at maturity it has the right to apply any deposit, which it holds for the maker, to the payment of such note. *Wood* v. *Boylston Nat. Bank*, 129 Mass. 358, 37 *Am. Rep.* 366. *See Central Nat. Bank* v. *Conn. Mut. Life Ins. Co.*, 104 *U. S.* 54. However, a bank which accepts a deposit of money for a certain purpose, agreeing to pay the amount when needed, cannot apply it to the payment of debts due the bank by the depositor. *Smith* v. *Sanburn State Bank*, 147 Iowa 640, 126 N. W. 779, 30 L. R. A. (N. S.) 779.

But whether banks in such cases are required to apply such deposits in order to prevent the discharge of the sureties, has given rise to irreconcilable conflict of opinion. The bank is the absolute owner of money deposited in it, and is merely a debtor to the general account of the depositor for such amount; therefore the depositor has no title to the fund so deposited of which a surety can avail himself. *Camp* v. *First Nat. Bank*, 44 Fla. 497, 33 South. 241, 103 Am. St. Rep. 173. This seems to be the prevailing rule. *Davenport* v. *St. Banking Co.*, 126 Ga. 136, 54 S. E. 977, 8 L. R. A. (N. S.) 944; *Cit. Bank* v. *Booze*, 75 Mo. App. 189. However, there are a number of respectable authorities in accord with the decision of the principal case. *Bank* v. *Foreman*, 138 Pa. St. 474, 21 Atl. 20; *Burgess* v. *Deposit Bank*, 30 Ky. L. Rep. 177, 97 S. W. 761.

BILLS AND NOTES—STIPULATIONS FOR ATTORNEY'S FEES—USURY.—The defendant made a note containing a provision that in case of suit for collection he would be liable for attorney's fees. *Held*, the transaction is not usurious. *International Motor Co.* v. *Palmer*, 155 N. Y. Supp. 357.

The negotiability of a note containing such a stipulation has been attacked on the ground that the amount is rendered uncertain and the payment conditional. *Kendall* v. *Parker*, 103 Cal. 319, 37 Pac. 401, 42 Am. St. Rep. 117; *Maryland Fertilizing & Mfg. Co.* v. *Newman*, 16 Md. 584, 45 Am. Rep. 750; *First Nat'l Bank of Stillwater* v. *Larsen*, 60 Wis. 206, 19 N. W. 67. But the better view is that its negotiability is not destroyed, for a negotiable instrument only passes as money until ma-